111-684

Supreme Court of the United States.

October Term, 1882.—No. 337.

WILLIAMS & THOMSON, AND WILLIAM S. WILLIAMS, INDIVIDUALLY, AND AS TRUSTEE, APPELLANTS,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR, INDIVIDUALLY, AND AS TRUSTEES AND RECEIVERS, ET AL., APPELLEES.

Appeal from the Circuit Court of the United States for the District of Louisiana.

Now, to wit, the 4th day of January, 1883, come the above-named appellants, by their counsel, and move the Court to order that the consideration of the motion, filed by the appellees, to dismiss the appeal in this case, be postponed until the hearing of the cause upon its merits.

The following are the general grounds upon which this motion is founded:

1. The record was filed in this Court on the 11th day of October, 1880, and no motion to dismiss was interposed until December 11, 1882; and the cause will no doubt be reached early at the next term of the Court.

2. The record has not been printed.

3. The portions of the record which the appellees have caused to be printed, in support of their motion, are not sufficient to enable the Court to act understandingly without reference to the transcript on file.

4. The appellants dispute many of the facts assumed, or maintained, by the appellees in supporting their motion; and submit, as is obvious from an inspection of the printed brief of the appelles, that the decision of the motion requires such an examination of the whole record as can only be made on a full hearing.

5. The motion to dismiss purports to be founded, in part, upon what is termed "an additional transcript of proceedings," in the Court below, subsequent to May 21, 1880, the date of the present appeal, which transcript appellees, in the motion papers, state that they have *filed*, and which, in their argument, they "pray reference to, and that it be put on file for all the purposes of this hearing." This transcript constitutes no part of the record certified to the Court upon the present appeal.

J. HUBLEY ASHTON,
JAMES THOMSON,
Of Counsel for Appellants.

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OFFICE SUPREME COURT U.S.
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JAMES H. MCKENNEY, CLK.

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EDWIN D. MORGAN AND JAMES A. RAYNOR, INDIVIDUALLY, AND AS TRUSTEES, AND RECEIVERS, ET AL., APPELLEES.

Appeal from the Circuit Court of the United States for the District of Louisiana.

Motion of Appellants to Postpone the Consideration of Motion of Appellees, to Dismiss the Appeal.

BRIEF FOR APPELLANTS ON THEIR MOTION.

The appeal, in this case, was duly allowed to the appellants, on the 21st of May, 1880, and the transcript was filed, in this Court, on the 11th of October, 1880.

On the 11th of December, 1882, (more than two years after the case came here,) the appellees filed a motion to

dismiss the appeal, and they have fixed January 8, 1883, as the time for its submission to the Court.

The transcript is a voluminous one, and contains the history of the administration of an insolvent railroad corporation, known as The New Orleans, Mobile, and Texas Railroad Company.

The appellants, who claim to have rights which the Court will protect, under the principles heretofore adjudged by it, in this class of cases, complain of certain decrees of the Court below, making allowances to the receivers, and the solicitor, connected with that administration, by which the appellants were required, improperly, unjustly, and illegally, as they claim, to pay a very large sum of money to those officers.

A careful examination of the transcript, in connection with the motion of appellees to dismiss the appeal, has satisfied the counsel of the appellants that the motion cannot be properly considered by the Court, upon the fragments of the record which the appellees have caused to be printed, and without referring to the transcript on file, and, indeed, that the decision of the motion requires such an examination of the whole record as can only be made on a full hearing.

The appellants have accordingly filed a motion, to the effect, that the Court *postpone* the consideration of the motion to dismiss until the case is heard on its merits.

In the case of *The National Bank* v. *Insurance Company*, (100 U. S., 43,) where the Court ordered a motion to dismiss an appeal to be postponed until the full hearing, the learned Chief Justice said:

"The record has not been printed, and counsel do not agree as to what it contains. We will not decide motions to dismiss before the record is printed, when there is any question about the facts on which the motion rests. In order to get a decision before printing, the motion papers must present the case in a way which will enable us to act understandingly without referring to the transcript on file."

In the case of *Blossom* v. *The Railroad Company*, (1 Wall., 657,) a foreclosure case, the Court said that it would not dismiss an appeal of a bidder at a marshal's sale, on mere motion; the decision involving the merits of the case, and such an examination of the whole record as can only be made on a full hearing.

In the latter case the motion to dismiss was for that reason *overruled*.

The counsel for the appellants do not and cannot agree that the portions of the record which the appellees have printed, are all-sufficient for the purposes of the Court in hearing the motion to dismiss.

Nor do they or can they agree to the views of the *facts* involved in the consideration of that motion, so elaborately presented in the brief of the counsel for appellees.

The determination by the Court of those matters of controverted facts, obviously requires an examination of the record of the case.

The motion to dismiss the appeal, it will be observed, purports to be founded not only upon the transcript certified to this Court, on the appeal, but also upon what is termed "an additional transcript of proceedings in the suit, commencing on 25th May to the close."

This additional transcript is no part of the present record.

In the motion-papers the learned counsel for appellees states that the additional transcript has been *filed*, but, in his argument, he prays that it may be *put on file* for all the purposes of this hearing.

No order has been made by this Court to put it on file.

No diminution of the record, in this case, has been suggested, and no *certiorari*, to correct any alleged error, or omission, has been ordered.

The motion to postpone the consideration of the appellees' motion to dismiss, is respectfully submitted upon these observations.

If the Court should conclude to overrule our motion, and proceed to the consideration of the motion to dismiss, before the record is printed, we respectfully request that the time be extended for the preparation of an argument, on that motion, in reply to the argument for the appellees.

J. HUBLEY ASHTON,
JAMES THOMSON,
Of Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 90.

WILLIAM S. WILLIAMS AND DAVID THOMSON, PARTNERS AS WILLIAMS & THOMSON, &c., APPELLANTS,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR, INDIVIDUALLY AND AS TRUSTEES AND RECEIVERS, &c.

FILED DECEMBER 11, 1883.